

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN HANCOCK LIFE INSURANCE)	CA 04-10181
)	Boston, MA
v.)	February 12, 2004
)	
SPHERE DRAKE INSURANCE LIMITED)	

BEFORE THE HONORABLE MARK L. WOLF
UNITED STATES DISTRICT JUDGE

APPEARANCES:

Prince, Lobel, Glovsky & Tye
by MITCHELL S. KING, ESQ.
585 Commercial St., Boston, MA 02109
for Plaintiff

Butler, Rubin, Saltarelli & Boyd
by HAROLD C. WHEELER, ESQ.
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for Defendant

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1 not ratified those contracts, and they've done the same
2 in the UK for purposes of seeking arbitration in the UK.

3 THE COURT: I'm not sure what -- this isn't the
4 time to answer, but -- maybe I'll let them respond -- but
5 I'm not sure what ratified the contracts for the purpose
6 of arbitration means.

7 MR. KING: There's no question before you, your
8 Honor, as to whether the parties are obliged to
9 arbitrate. So the question becomes -- the both parties
10 --

11 THE COURT: What's the source of the obligation?

12 MR. KING: The slips. They agree that --
13 there's a statement from counsel. It's an admission
14 against the party. There's a statement that says, we
15 agree the parties are obliged to arbitrate per the slips.
16 That's their statement. And that's found in the papers.
17 That's a letter by, I believe, a solicitor from -- reply
18 from a Mr. Bell, saying: The parties are obliged to
19 arbitrate under the slips. We maintain it's UK law. You
20 maintain it's US.

21 So I think that addresses --

22 THE COURT: Let's see what Sphere Drake says.

23 MR. WHEELER: If it please the court, I'm
24 Harold Wheeler on behalf of Sphere Drake.

25 Your Honor, our position, as the court

1 recognizes, is that these contracts of reinsurance or
2 punitive contracts of reinsurance are void. We have
3 agreed, both in proceedings here and in proceedings in
4 London, to conduct arbitration in accordance with the
5 guidance of the slips themselves. But we certainly do
6 not ratify the slips. We will continue to maintain both
7 in the course of the arbitrations that they're void.

8 THE COURT: Well, I haven't studied this. I
9 haven't done an insurance case in a while. But, as a
10 practical matter, if the agreements are void, why,
11 because of some kind of fraud?

12 MR. WHEELER: Correct. We will contend in any
13 of these proceedings that Sphere Drake's agent, Euro
14 International, EIU, was without authority to enter into
15 the agreements. They did so in breach of their fiduciary
16 duty. And that Hancock's agent, Sterling Cook, knew they
17 were without authority.

18 THE COURT: And if that's true of the agreement
19 -- because, basically, if I address the merits of this
20 case, I'm essentially trying to discern the intent of the
21 parties. You know, was there an intent to obligate the
22 parties to arbitrate in Massachusetts? And none of them
23 have expressed forum selection clause, although one of
24 them makes reference to another agreement that says
25 Massachusetts.

1 service that we will arbitrate as this court ultimately
2 directs.

3 THE COURT: But if I -- I mean, one of the
4 things -- well, do you intend for me to take up in
5 connection with the motion to dismiss or the motion for
6 preliminary injunction the issue of whether the
7 agreements are void?

8 MR. WHEELER: We do not, your Honor.

9 THE COURT: And do you intend to raise that
10 issue at any point in this litigation?

11 MR. WHEELER: Not in this litigation, your
12 Honor. Wherever this court or the court in England
13 ultimately directs that the arbitration go forward, we
14 expect to raise that argument in the context of the
15 arbitration, that the contracts are void.

16 THE COURT: And if I applied Judge Saris'
17 framework for analysis and stayed this litigation pending
18 a decision by the court in London, the court in London
19 could decide to send the case to Massachusetts for
20 arbitration, in your view?

21 MR. WHEELER: Yes.

22 THE COURT: Or at least it could decline to
23 order arbitration in England and say, I think
24 Massachusetts is more appropriate. And then you all
25 could come back to me, and I would likely order